

## THE ROLE OF TITLE INSURANCE – WHAT IS COVERED AND WHAT IS NOT

What is it really? Why would Lender's and Buyer's want it?

Title insurance was first introduced in 1876, when the then called "Real Estate Title Insurance Company of Philadelphia" was founded. Title insurance was born of necessity for parties to be able to feel and be secure in a large purchase they had made. Land was and continues today to be an important commodity. It is often the single largest purchase a consumer will make during their lifetime.

As part of the real estate transaction, the title to the premises must be searched by or on behalf of the closing company or Title Company. The searches in this state are generally performed in accordance with the laws of the State of New Hampshire and the New Hampshire Title Examination Standards promulgated by the New Hampshire Bar Association Real property, Trust and Probate section. The general length of the title search varies in length with the search period recommended by the Title Standards, being a minimum thirty five year period.

Title Insurance applies insurance principles to real estate title hazards. Most of us never dream of having our home be uninsured against fire or theft, nor would our Lender allow us not to secure homeowner's insurance. Lender's realize that losses from claims against the title to a parcel or tract of land may be much greater than destruction by fire, since, after a fire, one still may rebuild on there land. If title to your land fails, you are left with nothing unless you have obtained title insurance coverage. With this in mind, it is no wonder that in all residential real estate transactions, Lender's universally require the Purchaser/Borrower to purchase title insurance for the protection of the lender. The Purchaser also has the option to purchase an Owner's Policy for there protection at the closing, generally at a reduced rate.

The two basic policies available in residential transactions are:

### Lender's Policy

A Lender's Policy insures **to the lender only** that, as the holder of the mortgage, it has a valid, recorded first mortgage lien on the property. The policy indemnifies the mortgage holder against loss or damage it might sustain resulting from title defects insured against under the policy. The policy protects the Lender's interest in the property as security for the outstanding balance of the loan up to the face amount of the policy. The premium paid for the policy is a one time premium paid by the Borrower on behalf of the Lender for the life of the particular loan. The policy remains in effect until the loan is paid or otherwise satisfied. The lender's policy does not provide any coverage to the owner.

### Owner's Policy:

Title insurance may also be purchased by the Buyer or Borrower to protect themselves. The owner's Policy protects the property owner against loss or damage they

might sustain resulting from covered defects in the title. The owner's Policy provides coverage to the Owner of the property against any loss or damage arising out of a covered defect in title existing at the date of the policy. The policy terms require the company to provide defense of a covered claim and to indemnify loss incurred on account of a covered claim. Coverage exists during ownership of the property and extends as long as the policy holder or his heirs or devisees may be liable on any warranty covenants. The premium paid on an Owner's Policy is also a one time premium.

**What kinds of things does title insurance cover?:**

Generally, title insurance covers:

- (1) Matters/Defects which were of record in the Registry of Deeds but for any reason, missed or overlooked. Examples: Outstanding Mortgages and Attachments, Rights of First Refusal which have not been released, Violation of Restrictive Covenants; Homestead Rights not released, etc; and
- (2) Matters/Defects which could not be uncovered by the title search. Examples: Use of a Power of Attorney that had been previously terminated; Fraud/Forgery on Deeds; Deeds signed under duress of by Incompetent person or minors; unpaid real estate taxes.

**Principle Features of Title Insurance:**

Protection: If a future covered claim against the title to the property results in loss of title to the property or if expenses are incurred clearing up the title defects, title insurance will provide coverage up to the face amount of the policy.

Legal Defense: Should a future covered claim against the real property require legal defense, the title insurer will work with the insured to provide legal defense and to pay the cost of defense.